

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NATIONWIDE GENERAL INSURANCE COMPANY a/s/o Meghan Gallagher,	*	Civil Action Number:
	*	
	*	
Plaintiff,	*	
	*	
	*	
	*	
	*	
v.		
	*	
	*	
	*	
THE UNITED STATES OF AMERICA,	*	
	*	
	*	
Defendant.	*	

COMPLAINT

THE PARTIES

1. Plaintiff Nationwide General Insurance Company (hereinafter "Plaintiff") is a corporation which is doing business within the boundaries of the State of Delaware and which, at all times pertinent hereto, insured Meghan Gallagher, a resident of the State of Delaware, pursuant to a policy of motor vehicle insurance providing her with Personal Injury Protection (PIP) motor vehicle insurance coverage.

2. Defendant The United States of America (hereinafter "Defendant"), at all times pertinent hereto, acted by and through its employees, its agents, its servants, and/or its duly authorized representatives generally, and those of the United States Postal Service (USPS) specifically (most notably William Speakman), and therefore is liable for the negligent, the reckless, the wanton, and/or the wrongful acts and/or omissions of the employees, the agents, the servants, and/or the duly authorized representatives of the United States Postal Service (USPS), and most notably those of

William Speakman, and thus its own employees, its own agents, its own servants, and/or its own duly authorized representatives, pursuant to the legal doctrine of respondeat superior.

JURISDICTION

3. Jurisdiction for the claims of Plaintiff is founded upon 28 U.S.C. §1346(b) and 28 U.S.C. §2671, et seq., since the claims of Plaintiff arise out of personal injuries that were directly and/or proximately sustained by its insured, Meghan Gallagher, and that were directly and/or proximately caused by the negligent, the reckless, the wanton, and/or the wrongful acts and/or omissions of the employees, the agents, the servants, and/or the duly authorized representatives of the United States Postal Service (USPS), most notably those of William Speakman, and thus Defendant, while said employees, agents, servants, and/or duly authorized representatives were acting within the course and/or scope of their employment, their agency, their servitude, and/or their authority as granted by the United States Postal Service (USPS), and thus Defendant.

4. All of the occurrences, incidents, events, acts, and/or omissions which produced the claims of Plaintiff (most notably those of William Speakman) took place within the boundaries of the State of Delaware.

COUNT I – PERSONAL INJURY PROTECTION (PIP) SUBROGATION CLAIM OF PLAINTIFF NATIONWIDE GENERAL INSURANCE COMPANY

5. Paragraph #1 through Paragraph #4 as set forth above are hereby expressly incorporated by reference as though set forth herein at length.

6. On or about Saturday, December 30, 2006, Meghan Gallagher, a resident of the State of Delaware and an insured of Plaintiff pursuant to a policy of motor vehicle insurance, had the motor vehicle that she was operating struck by a United States Postal Service (USPS) motor vehicle (and therefore Defendant's motor vehicle) that was negligently, recklessly, wantonly, and/or wrongfully operated by William Speakman, an employee, an agent, a servant, and/or a duly authorized representative of the United States Postal Service (USPS), and therefore Defendant.

7. The aforesaid motor vehicle accident occurred on or near the intersection of Ricky Boulevard and Pulaski Highway in or near Bear, Delaware.

8. The aforesaid motor vehicle accident was directly and/or proximately caused by William Speakman, the aforesaid employee, agent, servant, and/or duly authorized representative of the United States Postal Service (USPS), and thus Defendant, in that he:

- (a) Operated the aforesaid United States Postal Service (USPS) motor vehicle (and thus Defendant's motor vehicle) in a careless and/or imprudent manner;
- (b) Failed to maintain a proper lookout while operating the aforesaid United States Postal Service (USPS) motor vehicle (and thus Defendant's motor vehicle);
- (c) Operated the aforesaid United States Postal Service (USPS) motor vehicle (and thus Defendant's motor vehicle) at a speed that was greater than was reasonable and/or prudent under the conditions and/or without exhibiting due regard

for the then-existing actual hazards that were in the roadway and/or the then-existing potential hazards that were in the roadway;

- (d) Operated the aforesaid United States Postal Service (USPS) motor vehicle (and thus Defendant's motor vehicle) in such a manner as to follow another motor vehicle more closely than was reasonable and/or prudent;
- (e) Operated the aforesaid United States Postal Service (USPS) motor vehicle (and thus Defendant's motor vehicle) in such a manner as to cause the aforesaid United States Postal Service (USPS) motor vehicle (and thus Defendant's motor vehicle) to be moved from a stopped position before such movement could be made with reasonable safety;
- (f) Operated the aforesaid United States Postal Service (USPS) motor vehicle (and thus Defendant's motor vehicle) in willful and/or wanton disregard for the safety of persons and/or property;
- (g) Failed to observe his common law duty to exercise due care in the operation of the aforesaid United States Postal Service (USPS) motor vehicle (and thus Defendant's motor vehicle); and/or

(h) Committed other negligent, reckless, wanton, and/or wrongful acts and/or omissions in the operation of the aforesaid United States Postal Service (USPS) motor vehicle (and thus Defendant's motor vehicle) that will be revealed through the course of discovery.

9. As a direct and/or proximate result of the aforesaid negligent, reckless, wanton, and/or wrongful acts and/or omissions of William Speakman, the aforesaid employee, agent, servant, and/or duly authorized representative of the United States Postal Service (USPS), and thus Defendant (and the occurrence of the aforesaid motor vehicle accident of Saturday, December 30, 2006), Meghan Gallagher, the insured of Plaintiff, incurred \$4,144.29 in accident-related medical expenses, for which she was compensated by Plaintiff per statute and/or per the terms of the Personal Injury Protection (PIP) provisions of the aforesaid policy of motor vehicle insurance.

10. Per statute, per the terms of the Personal Injury Protection (PIP) provisions of the aforesaid policy of motor vehicle insurance, and/or per the dictates of the common law, Plaintiff is subrogated to the legal rights of its insured, Meghan Gallagher, arising from the aforesaid motor vehicle accident of Saturday, December 30, 2006, to the extent of the Personal Injury Protection (PIP) motor vehicle insurance benefits that were paid by Plaintiff to, and/or on behalf of, its insured, Meghan Gallagher, as a direct and/or proximate result thereof.

11. By correspondence dated Wednesday, June 6, 2007, the administrative tort claim that had been previously submitted by Plaintiff, pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, et seq., was incorrectly and/or wrongfully denied, thereby making the commencement of the instant action unavoidable.

WHEREFORE. Plaintiff Nationwide General Insurance Company respectfully prays that the Court will enter Judgment against Defendant The United States of America in the amount of \$4,144.29 plus costs; pre-judgment interest; post-judgment interest; and all other relief which the Court shall deem to be proper, equitable, and/or just.

Respectfully Submitted,

CHRISTOPHER J. SIPE, ESQ., P.A.



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ATTORNEY FOR PLAINTIFF
NATIONWIDE GENERAL INSURANCE
COMPANY

Dated: 12-4-07

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

*Nationwide General Insurance Company also
Meghan Gallagher
AIA (Statewide)*

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

*Christopher J. Sipe, Esq., P.A.
P.O. Box 8000
Wilmington, DE 19899-8000**Phone: (302)
995-5600*

DEFENDANTS

*The United States of America
AIA (State wide)*

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

*U.S. Attorney's Office
1007 N. Orange Street, Suite #700
Wilmington, DE 19801*

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input checked="" type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	PROPERTY RIGHTS	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input checked="" type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other		<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		SOCIAL SECURITY	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL/TAX SUITS	<input type="checkbox"/> 863 DIWC/DIW (405(g))
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Federal Tort Claims Act

Brief description of cause:

PIP insurance subrogation

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

December 4, 2007

SIGNATURE OF ATTORNEY OF RECORD

Christopher J. Sipe

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IIP

JUDGE

MAG. JUDGE

CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2007 DEC -5 AM 9:20

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07-785

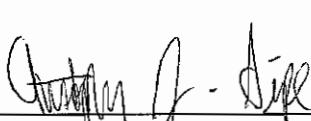
ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 3 COPIES OF AO FORM 85.

DEC 05 2007

(Date forms issued)


(Signature of Party or their Representative)

Christopher J. Sipe, Esq.
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action